IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1714 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER RAJKOT MUNICIPAL CORPORATION

Versus

GEETABEN ANILKUMAR TANK C/O DR CHAUDHARY

Appearance:

MR KV GADHIA for Petitioner

MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/06/2001

ORAL JUDGEMENT

The present petition is filed by the Commissioner, Rajkot Municipal Corporation, Rajkot, challenging the award dated 16.8.2000, passed by the learned Judge of the Labour Court, Rajkot in Reference

(LCR) No.674 of 1992, whereby the learned Judge ordered reinstatement of the respondent workman to her original post with continuity of service along with 40% back wages and cost of Rs.500/-.

2. The facts giving rise to the present petition are that the respondent workman was appointed as an apprentice as per order dated 27.9.1988 and her training period was upto 30.9.1989. It so happened that the respondent workman was assigned the work of 'typing' pertaining to tenders of construction department. On completion of the apprenticeship for working of the Legal Department, the present respondent workman was given appointment from 30.9.1989 to 28.2.1990. In the meantime, to good luck of the respondent workman, the petitioner corporation was assigned the census work by a letter dated February 1990, which is produced at Annexure 'A'. It is stated in so many words in that letter that these posts will be abolished on the work of census being over. In view of the 'census work' the respondent workman was given appointment from 1.3.1990 to 31.8.1990 on the post which was created under the aforesaid letter. It so happened that the work continued beyond 31.8.1990 and therefore, the respondent workman was given extension on hear application dated 23.7.1990, which is at Annexure 'C' to the petition. In the said application the respondent workman herself has stated that, "looking to the need of the work in the Census Department, on the ad hoc post she was given an ad hoc appointed as a typist and the term of the said post was to end on 31.8.1990." It is further stated in the said application that, "as the Census work is likely to continue even beyond 31.8.1990, in its second and final stage upto March 1991, she may be continued on ad hoc basis till March 1991." The Corporation showing indulgence granted an extension from 3.9.1990 to 28.2.1991. However, as the typing work was over, the services of the respondent workman came to be terminated on 21.9.1990. It is this order of termination was the subject matter of the reference before the Labour Court. The Labour Court for the reasons discussed in paras 6, 7 and 8, has passed the award which is the subject matter of this petition.

3. Mr.Gadhia, learned advocate for the petitioner corporation submitted that the post on which the respondent workman was appointed was created under letter dated February 1990, Annexure 'A' to the petition and it is categorically mentioned in that letter that the moment the work of census will come to an end the establishment will also come to an end and the posts created thereunder will be abolished. Mr.Gadhia, the learned advocate for

Rajkot Municipal Corporation also pointed out that even from her own admission, in the application dated 23.7.1990, it is clear that the respondent workman was aware of the nature of the post, nature of work and also the period for which the post was created. Therefore, the request was only to the extent that her services may be continued for such period till the census work continues. In light of the facts on record, on completion of census work, if the services of the respondent workman are terminated this Court finds no reason for which the learned Labour Judge should have passed an award to the effect that, "the respondent workman should be reinstated." The learned Labour Judge ought to have appreciated that there is no post and the post on which appointment was given was absolutely of ad hoc nature and has to come to an end on the completion of the census work.

4. Mr.Gadhia, learned advocate also submitted that the respondent workman had filed a civil suit bearing No.RCS No.988 of 1990 in the Court of the learned Civil Judge (Senior Division), Rajkot with an application for interim relief, exh.5, which was rejected. The said suit is stated to be pending, which shows that by any means the respondent workman wanted to continue in service of the petitioner corporation.

5. On the other hand, the learned advocate Mr.Hathi submitted that the learned Labour Judge was right in holding that the respondent workman has worked for more than 240 days. Therefore, she is entitled to all the benefits under the relevant provisions of Labour laws. Mr.Hathi, learned advocate vehemently submitted that 240 days are to be counted from day one when the respondent workman was appointed as an apprentice by the petitioner corporation. By an order dated 27.9.1998, the respondent workman was appointed as apprentice for a period commencing from 30.9.1998 to 30.9.1999. It is shocking that an argument is advanced to the effect that the training period as an apprentice be also taken into consideration for the benefits of various provisions of Labour laws. If that argument is accepted and on that basis if period of 240 days is reckoned, it will lead to an unrevertible situation. The argument is neither in consonance with the spirit of law nor the words of law. It is understandable if period since 30.9.1989, i.e. the date of appointment on completion of training is requested to be considered for computation of 240 days, though the said appointment was also for a specific period only, which came to an end on 28.2.1990. In view of this, it cannot be said that the respondent workman

has worked for 240 days as claimed. So far as the present appointment is concerned, starting since 1.3.1990, the same was under a specific scheme, for a specific work/ assignment from census department. When that has to come to an end, there is no reason for which services of the respondent workman could have been continued. The learned Labour Judge is required to take into consideration the hard realities of life also and is not expected to give such interpretation to the benevolent provisions of Labour laws, which may lead to frustration of the very provisions.

6. Mr.Hathi, learned advocate also contended that the documents which are placed along with this Special Civil Application were not produced before the Court. The contention raised by Mr.Hathi does not warrant any consideration in view of the fact that what is discussed hereinabove was before the learned Labour Judge as is born out from para 6 of the award. Be that as it may. The fact remains that the respondent workman was very much aware of the nature of work and also the nature and tenure of appointment.

7. In view of the aforesaid discussion, the award of the Labour Court is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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